IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9844 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHUMANBHAI BHIMJIBHAI RATHWA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 9844 of 2001

MR RS SANJANWALA for Petitioners No. 1-3

MS HANSA PUNANI, APP for Respondent No. 1

NOTICE NOT RECD BACK for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 08/01/2002

ORAL JUDGEMENT

1. Rule. Ms. Hansa Punani, ld. APP appears and

waives service of Rule on behalf of the Respondents. Investigating Officer Mr. Pandurang Omkar is also present before the Court. At the request of ld. counsel appearing for the parties, the application is taken up for final hearing today.

2. The petitioners have preferred this application under Section 482 of CrPC and has prayed to quash and set aside the complaint being CR No. 2097/2001 registered at Navsari Prohibition Station, Navsari for the offences punishable under Section 70-A & 81 of Bombay Prohibition Act and to release the truck No. GJ-17-T-8001 belonging to the petitioners.

3. I have perused the papers of investigation and after considering the contentions of the ld. counsel appearing for the parties, I am inclined to allow this petition as material averments made in this application are not controverted by affidavit-in-reply. It is not a matter of dispute that in similar such complaints, the petitions under Section 482 of CrPC have been filed before this Court and this Court has quashed such similar types of complaints. Mr. Sanjanwala, ld. counsel appearing for the petitioners has produced number of orders passed by this Court in similar types of petitions. One such order is produced by ld. counsel Mr. Sanjanwala for the petitioners passed by this Court (Coram: J.M.Panchal,J) in Misc. Cri. Application No. 750/96 on 13.9.1995 (Page-48 of the petition) wherein details of similar such petitions have been given. I would like to quote relevant para of the said decision which is as under:-

" It is an admitted position that similar such complaints have been quashed by the High Court in (1) Misc. Criminal Application No. 482/95 decided on February 10,1995 by the Court (Coram: R.A.Mehta,J), (2) Spl. Criminal Application No. 1222/91 decided on September 6, 1991 by the Court (Coram: J.U.Mehta,J), (3) Misc. Criminal Application Nos. 2785/91, 2786/91 and 2787/91 all decided on August 25, 1993 by the Court (Coram: N.J. Pandya,J), and (4) Misc. Criminal Application Nos. 4472, 4473, 4488, 4489 and 4499 all of 1993 decided on September 3,1993 by the Court (Coram: N.J. Pandya,J)."

4. It is contended by ld. APP that if the petitioners would have produced the documents before the Investigating Officer concerned which are produced before this Court today, the Investigating Officer concerned would have released muddamal truck and rotten gur.

5. Without going into the merits of the submission made by ld. APP and in view of settled legal position

and earlier precedent, this application is hereby allowed and CR No. 2097/2001 registered with Navsari Prohibition Station, Navsari is hereby quashed and set aside on the following conditions :-

(i) The muddamal goods attached from the truck in question be released to the petitioners on their undertaking to the Court that the goods shall not be stored or used or consumed in Gujarat Territory and will be taken to M/s Bhagwandas & Brothers, having their place of business at Danu Road, Maharashtra;

(ii) The petitioners shall carry the goods in the truck in question under police escort to be given by the Police authorities at the costs of the petitioners.

(iii) The truck bearing registration No. GJ-17-T-8001 shall be released in favour of the petitioners after proper verification.

6. Rule is made absolute to the extent indicated hereinabove.
Direct Service is permitted.

8.1.2002 [C.K. BUCH, J]
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